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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 10, 2001

VIA HAND DELIVERY
Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: **PETROLEUM COMMUNICATIONS, INC.**
Ex Parte Presentation
Gulf of Mexico Cellular Rule Making Proceeding
WT Docket 97-112; CC Docket 90-6

Dear Ms. Salas:

On behalf of Petroleum Communications, Inc. ("PetroCom"), we recently submitted a comprehensive response to Alltel Corporation's latest filing in the referenced dockets. In this letter, we briefly address filings made on January 8, March 14, and April 4, 2001 by Alltel's adversary, Bachow/Coastel, LLC. An original and four copies of this letter are being submitted.

Alltel and Bachow/Coastel are engaged in a dispute regarding B-side cellular coverage of Mobile Bay, Alabama. This dispute is the foundation for Alltel's argument for overhauling the existing licensing rules for all cellular systems in and near the Gulf. Without taking a position concerning which of these two carriers (Alltel or Bachow/Coastel) is at fault for the lack of an agreement on Mobile Bay, it appears that over time these parties are viewing private negotiations as a more effective way to resolve their differences compared to the adoption of new FCC rules.

Bachow/Coastel's submissions bear out this conclusion. Its January 8 ex parte presentation, at page 1, accuses land carriers of using the Mobile Bay problem as a justification to steal territory from Gulf carriers. At page 4, Bachow/Coastel claims that the rule making removed all incentive for land carriers to reach contour extension agreements with the Gulf carriers.

Bachow/Coastel's March 14 filing, however, takes a decidedly different tact. Rather than claim that the rule making has made it nearly impossible to negotiate an agreement concerning Mobile Bay, Bachow/Coastel submits evidence of such negotiations, including an exchange of co-location proposals between the two carriers. It also submits four agreements – two intercarrier roamer service agreements, a cell sharing agreement, and a contour extension agreement – as further evidence that such agreements are possible under the current rules.

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Bachow/Coastel's April 4 filing, at page 5, provides further details about its negotiations with Alltel, including an acknowledgment that Bachow/Coastel requested 67% of the revenue from the Mobile Bay coastline cell sites. Bachow/Coastel claims that it derived that figure from data entered into the public record by GTE. It then attacks Alltel for ignoring this basis for the 67% revenue share, while claiming that Alltel has distorted its stance to the Commission and U.S. Congress.

Bachow/Coastel's filings thus demonstrate that, over the time period of the past several months, it and Alltel have actively sought a negotiated resolution of their Mobile Bay dispute. Their failure to reach an agreement is secondary in importance to the fact that they are attempting to do so under the current rules. The evidence of their negotiations reveals that neither side is claiming that an agreement is not possible under the existing rules. Rather, the co-location proposal from Alltel submitted with Bachow/Coastel's March 14 filing (with revisions) references "a high level description of technical approach" for collocation on the existing Orange Beach and Fort Morgan sites. Indeed, this evidence – now part of the record in the referenced dockets – shows that the parties have identified a technical solution that enables each of them to serve its market and minimize subscriber capture. One would think that Alltel would not propose such an agreement unless it believed it could be accomplished under the current rules. Only the economic points of the deal are still in dispute. This point is especially critical, as it highlights that Alltel is not advancing its "neutral zone" proposal out of a need to correct a problem with existing technical and service rules. Rather, Alltel is pushing its proposal to enhance its negotiating leverage vis-a-vis Bachow/Coastel.[1]

Both sides have an economic incentive to negotiate under the current rules. Alltel has an incentive because it has lost customers by failing to reach an extension agreement for Mobile Bay. Bachow/Coastel also has an economic incentive to negotiate, because it wants to maximize coverage of its market and increase revenues. These incentives are created by the existing rules, the same rules that have resulted in innumerable extension, dual licensing and co-location agreements among cellular carriers across the country, including the Gulf of Mexico. Indeed, the submission of the Alltel and Bachow/Coastel co-location proposal follows PetroCom's February 27 filing demonstrating its success in reaching co-location and extension agreements with land carriers. If Alltel and Bachow/Coastel similarly were conducting their negotiations outside the spotlight of this rule making, it is likely they would quickly come to an agreement. This likelihood is enhanced by their realization that until they reach an agreement, they will continue to lose revenue to competitors.

Bachow/Coastel's request for a 67% share of revenues might be unreasonable, perhaps resulting from its perception of the leverage gained from the Enforcement Bureau's ruling that required Alltel to pull-back contours under the existing rules. The rules, however, are not absolutely inflexible. Alltel, with

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[1]On April 9, 2001, Alltel filed a letter in this proceeding reporting an oral ex parte presentation made to Bureau staff on April 6. The letter, however, did not provide a memorandum summarizing the presentation as required by the ex parte rules. In response to our request for that memorandum, Alltel's counsel recently indicated that, at the April 6 meeting, Alltel: (1) acknowledged the offer which was included in Bachow/Coastel's March 14 submission; (2) informed the staff that it will be responding to the offer in the near future; and (3) will file its counter-proposal with the Commission, consistent with the procedure followed by Bachow/Coastel. This information (precisely the kind requiring disclosure under the ex parte rules) is even more evidence that Alltel and Bachow/Coastel can resolve their dispute under the existing rules, if they want to.

a proper showing, could obtain a waiver that would permit contour extensions in Mobile Bay based on the facts and circumstances. Bachow/Coastal, in other words, ultimately does not possess all of the leverage.

In sum, Bachow/Coastel's recent filings demonstrate that the existing rules create incentives even for intransigent parties to negotiate solutions without Commission intervention or the adoption of new rules. If such negotiations break down because one or both parties is unreasonable, the solution is not to overhaul the rules for all parties everywhere. Rather, at the very most, the Commission should examine whether the particular rule at issue should be waived in a particular case based on all the facts and circumstances. It has the opportunity to do so in the Mobile Bay dispute between Alltel and Bachow/Coastel if these two carriers cannot reach an agreement. This measured approach makes more sense than revamping the rules for everyone because of an isolated dispute between two parties.

Sincerely,

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cc: David Furth
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